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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**ADMINISTRATIVE MOTION TO SEAL
JOINT CASE MANAGEMENT
STATEMENT**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the parties’ Joint Case Management Statement, which contains non-public, sensitive confidential and proprietary business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed. This information is highly confidential and should be protected. This Court has previously sealed the same or substantively similar information, including in Dkts. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240.

This Administrative Motion pertains for the following information contained in the Joint Case Management Statement:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Case Management Statement	Portions Highlighted in Yellow at: page 11, lines 6-14; page 12, lines 9, 11, 13-14, 17-20; page 14, lines 12-13.	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with

1 equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v.*
 2 *McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-
 3 dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under
 4 the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
 5 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 6 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 7 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 8 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 9 “good cause” standard) (Van Keulen, J.). Although the materials that Google seeks to seal here easily
 10 meet the higher “compelling reasons” standard, the Court need only consider whether these materials
 11 meet the lower “good cause” standard.

12 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

13 Courts have repeatedly found it appropriate to seal documents that contain “business
 14 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435
 15 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 16 “contain[] confidential information about the operation of [the party’s] products and that public
 17 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of*
 18 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 19 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 20 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 21 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 22 standard where that information could be used to the company’s competitive disadvantage”) (citation
 23 omitted). Courts in this district have also determined that motions to seal may be granted as to
 24 potential trade secrets. *See, e.g., United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 25 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
 26 shown that the substance of the information . . . amounts to a trade secret”).

27 Here the Joint Case Management Statement comprises confidential and proprietary
 28 information regarding highly sensitive features of Google’s internal systems and operations that

1 Google does not share publicly. Specifically, this information provides details related to cookies,
2 internal identifiers, and financial projections as well as Google's internal communications and
3 practices with regard to Incognito, X-Client-Data Header, and their proprietary functions. Such
4 information reveals Google's internal strategies, system designs, and business practices for operating
5 and maintaining many of its important services while complying with its legal and privacy obligations.

6 Public disclosure of the above-listed information would harm Google's competitive standing it
7 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
8 Google's proprietary systems, strategies, and designs to Google's competitors. That alone is a proper
9 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
10 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google's motion to seal certain sensitive
11 business information related to Google's processes and policies to ensure the integrity and security of
12 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
13 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because "disclosure
14 would harm their competitive standing by giving competitors insight they do not have"); *Trotsky v.*
15 *Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal
16 as to "internal research results that disclose statistical coding that is not publically available").

17 Moreover, if publicly disclosed, malicious actors may use such information to seek to
18 compromise Google's identifier systems and practices. Google would be placed at an increased risk
19 of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D.
20 Cal. Sept. 25, 2013) (sealing "material concern[ing] how users' interactions with the Gmail system
21 affects how messages are transmitted" because if made public, it "could lead to a breach in the
22 security of the Gmail system"). The security threat is an additional reason for this Court to seal the
23 identified information.

24 The information Google seeks to redact, including cookies, internal identifiers, and financial
25 projections, as well as Google's internal communications and practices with regard to Incognito, X-
26 Client-Data Header, and their proprietary functions, is the minimal amount of information needed to
27 protect its internal systems and operations from being exposed to not only its competitors but also to
28 nefarious actors who may improperly seek access to and disrupt these systems and operations. The

1 “good cause” rather than the “compelling reasons” standard should apply but under either standard,
2 Google’s sealing request is warranted.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court should seal the identified portions of the Joint Case
5 Management Statement.

6
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